

Union Calendar No. 152

108TH CONGRESS
1ST SESSION

H. R. 253

[Report No. 108–266]

To amend the National Flood Insurance Act of 1968 to reduce losses to properties for which repetitive flood insurance claim payments have been made.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 8, 2003

Mr. BEREUTER (for himself and Mr. BLUMENAUER) introduced the following bill; which was referred to the Committee on Financial Services

SEPTEMBER 5, 2003

Additional sponsors: Mr. PETRI, Mr. FROST, and Mr. TERRY

SEPTEMBER 5, 2003

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on January 8, 2003]

A BILL

To amend the National Flood Insurance Act of 1968 to reduce losses to properties for which repetitive flood insurance claim payments have been made.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Two Floods and You*
3 *Are Out of the Taxpayers’ Pocket Act of 2003”.*

4 **SEC. 2. CONGRESSIONAL FINDINGS.**

5 *The Congress finds that—*

6 *(1) the national flood insurance program (A)*
7 *identifies the flood risk, (B) provides flood risk infor-*
8 *mation to the public, (C) encourages State and local*
9 *governments to make appropriate land use adjust-*
10 *ments to constrict the development of land which is*
11 *exposed to flood damage and minimize damage caused*
12 *by flood losses, and (D) makes flood insurance avail-*
13 *able on a nationwide basis that would otherwise not*
14 *be available, to accelerate recovery from floods, miti-*
15 *gate future losses, save lives, and reduce the personal*
16 *and national costs of flood disasters;*

17 *(2) the national flood insurance program insures*
18 *approximately 4,400,000 policyholders;*

19 *(3) approximately 48,000 properties currently*
20 *insured under the program have experienced, within*
21 *a 10-year period, two or more flood losses where each*
22 *such loss exceeds the amount \$1,000;*

23 *(4) approximately 10,000 of these repetitive-loss*
24 *properties have experienced either two or three losses*
25 *that cumulatively exceed building value or four or*
26 *more losses, each exceeding \$1,000;*

1 (5) repetitive-loss properties constitute a signifi-
2 cant drain on the resources of the national flood in-
3 surance program, costing about \$200,000,000 annu-
4 ally;

5 (6) repetitive-loss properties comprise approxi-
6 mately one percent of currently insured properties but
7 are expected to account for 25 to 30 percent of claims
8 losses;

9 (7) the vast majority of repetitive-loss properties
10 were built before local community implementation of
11 floodplain management standards under the program
12 and thus are eligible for subsidized flood insurance;

13 (8) while some property owners take advantage
14 of the program allowing subsidized flood insurance
15 without requiring mitigation action, others are
16 trapped in a vicious cycle of suffering flooding, then
17 repairing flood damage, then suffering flooding, with-
18 out the means to mitigate losses or move out of harm's
19 way;

20 (9) mitigation of repetitive-loss properties
21 through buyouts, elevations, relocations, or flood-
22 proofing will produce savings for policyholders under
23 the program and for Federal taxpayers through re-
24 duced flood insurance losses and reduced Federal dis-
25 aster assistance;

1 (10) a strategy of making mitigation offers
 2 aimed at high-priority repetitive-loss properties and
 3 shifting more of the burden of recovery costs to prop-
 4 erty owners who choose to remain vulnerable to repet-
 5 itive flood damage can encourage property owners to
 6 take appropriate actions that reduce loss of life and
 7 property damage and benefit the financial soundness
 8 of the program; and

9 (11) the method for addressing repetitive-loss
 10 properties should be flexible enough to take into con-
 11 sideration legitimate circumstances that may prevent
 12 an owner from taking a mitigation action.

13 **SEC. 3. EXTENSION OF PROGRAM AND CONSOLIDATION OF**
 14 **AUTHORIZATIONS.**

15 *The National Flood Insurance Act of 1968 is amended*
 16 *as follows:*

17 (1) **BORROWING AUTHORITY.**—*In the first sen-*
 18 *tence of section 1309(a) (42 U.S.C. 4016(a)), by strik-*
 19 *ing “through December” and all that follows through*
 20 *“, and” and inserting the following: “through the date*
 21 *specified in section 1319, and”.*

22 (2) **AUTHORITY FOR CONTRACTS.**—*In section*
 23 *1319 (42 U.S.C. 4026), by striking “after” and all*
 24 *that follows and inserting “after September 30,*
 25 *2008.”.*

1 (3) *EMERGENCY IMPLEMENTATION.*—*In section*
 2 1336(a) (42 U.S.C. 4056(a)), *by striking “during the*
 3 *period” and all that follows through “in accordance”*
 4 *and inserting “during the period ending on the date*
 5 *specified in section 1319, in accordance”.*

6 (4) *AUTHORIZATION OF APPROPRIATIONS FOR*
 7 *STUDIES.*—*In section 1376(c) (42 U.S.C. 4127(c)), by*
 8 *striking “through” and all that follows and inserting*
 9 *the following: “through the date specified in section*
 10 1319, for studies under this title.”.

11 **SEC. 4. ESTABLISHMENT OF PILOT PROGRAM FOR MITIGA-**
 12 **TION OF SEVERE REPETITIVE LOSS PROP-**
 13 **ERTIES.**

14 (a) *IN GENERAL.*—*The National Flood Insurance Act*
 15 *of 1968 is amended by inserting after section 1361 (42*
 16 *U.S.C. 4102) the following new section:*

17 *“PILOT PROGRAM FOR MITIGATION OF SEVERE REPETITIVE*
 18 *LOSS PROPERTIES*

19 *“SEC. 1362. (a) AUTHORITY.*—*To the extent amounts*
 20 *are made available for use under this section, the Director*
 21 *may, subject to the limitations of this section, provide fi-*
 22 *nancial assistance to States and communities for taking ac-*
 23 *tions with respect to severe repetitive loss properties (as*
 24 *such term is defined in subsection (b)) to mitigate flood*
 25 *damage to such properties and losses to the National Flood*
 26 *Insurance Fund from such properties.*

1 “(b) *SEVERE REPETITIVE LOSS PROPERTY.*—For pur-
2 poses of this section, the term ‘severe repetitive loss prop-
3 erty’ has the following meaning:

4 “(1) *SINGLE-FAMILY PROPERTIES.*—In the case
5 of a property consisting of one to four residences, such
6 term means a property that—

7 “(A) is covered under a contract for flood
8 insurance made available under this title; and

9 “(B) has incurred flood-related damage—

10 “(i) for which four or more separate
11 claims payments have been made under
12 flood insurance coverage under this title be-
13 fore the date of the enactment of the *Two*
14 *Floods and You Are Out of the Taxpayers’*
15 *Pocket Act of 2003*, with the amount of each
16 such claim exceeding \$5,000, and with the
17 cumulative amount of such claims pay-
18 ments exceeding \$20,000;

19 “(ii) for which four or more separate
20 claims payments have been made under
21 flood insurance coverage under this title
22 after the date of the enactment of the *Two*
23 *Floods and You Are Out of the Taxpayers’*
24 *Pocket Act of 2003*, with the amount of each
25 such claim exceeding \$3,000, and with the

1 *cumulative amount of such claims pay-*
2 *ments exceeding \$15,000; or*

3 *“(iii) for which at least two separate*
4 *claims payments have been made under*
5 *such coverage, with the cumulative amount*
6 *of such claims exceeding the value of the*
7 *property.*

8 *“(2) MULTIFAMILY PROPERTIES.—In the case of*
9 *a property consisting of five or more residences, such*
10 *term shall have such meaning as the Director shall by*
11 *regulation provide.*

12 *“(c) ELIGIBLE ACTIVITIES.—Amounts provided under*
13 *this section to a State or community may be used only for*
14 *the following activities:*

15 *“(1) MITIGATION ACTIVITIES.—To carry out*
16 *mitigation activities that reduce flood damages to se-*
17 *vere repetitive loss properties, including elevation, re-*
18 *location, demolition, and floodproofing of structures,*
19 *and minor physical localized flood control projects.*

20 *“(2) PURCHASE.—To purchase severe repetitive*
21 *loss properties, subject to subsection (f).*

22 *“(d) MATCHING REQUIREMENT.—*

23 *“(1) IN GENERAL.—Except as provided in para-*
24 *graph (2), the Director may not provide assistance*
25 *under this section to a State or community in an*

1 *amount exceeding 3 times the amount that the State*
 2 *or community certifies, as the Director shall require,*
 3 *that the State or community will contribute from*
 4 *non-Federal funds for carrying out the eligible activi-*
 5 *ties to be funded with such assistance amounts.*

6 “(2) *WAIVER.*—

7 “(A) *AUTHORITY.*—Subject to subparagraph
 8 *(B), the Director may waive the limitation*
 9 *under paragraph (1) for any State, and for the*
 10 *communities located in that State, with respect*
 11 *to a year, if, for such year—*

12 “(i) *5 percent or more of the total*
 13 *number of severe repetitive loss properties*
 14 *in the United States are located in such*
 15 *State; and*

16 “(ii) *the State submits a plan to the*
 17 *Director specifying how the State intends to*
 18 *reduce the number of severe repetitive loss*
 19 *properties and the Director determines,*
 20 *after consultation with State and technical*
 21 *experts, that the State has taken actions to*
 22 *reduce the number of such properties.*

23 “(B) *LIMITATION.*—In each waiver under
 24 *subparagraph (A), the Director may waive the*
 25 *limitation under paragraph (1) only to the ex-*

1 *tent that the State or community involved is re-*
2 *quired to contribute, for each severe repetitive*
3 *loss property for which grant amounts are pro-*
4 *vided, not less than 10 percent of the cost of the*
5 *activities for such properties that are to be fund-*
6 *ed with grant amounts.*

7 *“(3) NON-FEDERAL FUNDS.—For purposes of*
8 *this subsection, the term ‘non-Federal funds’ includes*
9 *State or local agency funds, in-kind contributions,*
10 *any salary paid to staff to carry out the eligible ac-*
11 *tivities of the recipient, the value of the time and*
12 *services contributed by volunteers to carry out such*
13 *activities (at a rate determined by the Director), and*
14 *the value of any donated material or building and the*
15 *value of any lease on a building.*

16 *“(e) STANDARDS FOR MITIGATION OFFERS.—The pro-*
17 *gram under this section for providing assistance for eligible*
18 *activities for severe repetitive loss properties shall be subject*
19 *to the following limitations:*

20 *“(1) PRIORITY.—In determining the properties*
21 *for which to provide assistance for eligible activities*
22 *under subsection (c), the Director shall provide assist-*
23 *ance for properties in the order that will result in the*
24 *greatest amount of savings to the National Flood In-*
25 *surance Fund in the shortest period of time.*

1 “(2) *OFFERS.*—*The Director shall provide assist-*
2 *ance in a manner that permits States and commu-*
3 *nities to make offers to owners of severe repetitive loss*
4 *properties to take eligible activities under subsection*
5 *(c) as soon as is practicable.*

6 “(3) *NOTICE.*—*Upon making an offer to provide*
7 *assistance with respect to a property for any eligible*
8 *activity under subsection (c), the State or community*
9 *shall notify each holder of a recorded interest on the*
10 *property of such offer and activity.*

11 “(f) *PURCHASE OFFERS.*—*A State or community may*
12 *take action under subsection (c)(2) to purchase a severe re-*
13 *petitive loss property only if the following requirements are*
14 *met:*

15 “(1) *USE OF PROPERTY.*—*The State or commu-*
16 *nity enters into an agreement with the Director that*
17 *provides assurances that the property purchased will*
18 *be used in a manner that is consistent with the re-*
19 *quirements of clauses (i) and (ii) of section*
20 *404(b)(2)(B) of the Robert T. Stafford Disaster Relief*
21 *and Emergency Assistance Act (42 U.S.C.*
22 *5170c(b)(2)(B)) for properties acquired, accepted, or*
23 *from which a structure will be removed pursuant to*
24 *a project provided property acquisition and relocation*
25 *assistance under such section 404(b).*

1 “(2) *PURCHASE PRICE.*—*The amount of purchase offer is not less than the greatest of—*

3 “(A) *the amount of the original purchase price of the property, when purchased by the holder of the current policy of flood insurance under this title;*

7 “(B) *the total amount owed, at the time the offer to purchase is made, under any loan secured by a recorded interest on the property; and*

10 “(C) *an amount equal to the fair market value of the property immediately before the most recent flood event affecting the property.*

13 “(g) *INCREASE TO ACTUARIAL RATES IN CASES OF REFUSAL TO MITIGATE.*—

15 “(1) *IN GENERAL.*—*In any case in which the owner of a severe repetitive loss property refuses an offer to take action under paragraph (1) or (2) of subsection (c) with respect to such property, the Director shall—*

20 “(A) *notify each holder of a recorded interest on the property of such refusal; and*

22 “(B) *increase the chargeable risk premium rate for flood insurance coverage under this title for the property to an amount equal to the applicable estimated risk premium rate for such area*

1 *(or subdivision thereof) under section 1307(a)(1)*
2 *and apply appropriate loss deductibles.*

3 “(2) *APPEALS.*—

4 “(A) *IN GENERAL.*—Any owner of a severe
5 *repetitive loss property may appeal a determina-*
6 *tion of the Director to take action under para-*
7 *graph (1)(B) with respect to such property,*
8 *based only upon the following grounds:*

9 “(i) *As a result of such action, the*
10 *owner of the property will not be able to*
11 *purchase a replacement primary residence*
12 *of comparable value and that is function-*
13 *ally equivalent.*

14 “(ii) *As a result of such action, the*
15 *preservation or maintenance of any pre-*
16 *historic or historic district, site, building,*
17 *structure, or object included in, or eligible*
18 *for inclusion in, the National Register of*
19 *historic places will be interfered with, im-*
20 *paired, or disrupted.*

21 “(iii) *The flooding that resulted in the*
22 *flood insurance claims described in sub-*
23 *section (b)(2) for the property resulted from*
24 *significant actions by a third party in vio-*

1 *lation of Federal, State, or local law, ordi-*
2 *nance, or regulation.*

3 *“(iv) In purchasing the property, the*
4 *owner relied upon flood insurance rate*
5 *maps of the Federal Emergency Manage-*
6 *ment Agency that were current at the time*
7 *and did not indicate that the property was*
8 *located in an area having special flood haz-*
9 *ards.*

10 *“(B) PROCEDURE.—An appeal under this*
11 *paragraph of a determination of the Director*
12 *shall be made by filing, with the Director, a re-*
13 *quest for an appeal within 90 days after receiv-*
14 *ing notice of such determination. Upon receiving*
15 *the request, the Director shall select, from a list*
16 *of independent third parties compiled by the Di-*
17 *rector for such purpose, a party to hear such ap-*
18 *peal. Within 90 days after filing of the request*
19 *for the appeal, such third party shall review the*
20 *determination of the Director and shall set aside*
21 *such determination if the third party determines*
22 *that the grounds under subparagraph (A) exist.*
23 *During the pendency of an appeal under this*
24 *paragraph, the Director shall stay the applica-*

1 *bility of the rates established pursuant to para-*
2 *graph (1).*

3 “(C) *EFFECT OF FINAL DETERMINATION.*—

4 *In an appeal under this paragraph—*

5 “(i) *if a final determination is made*
6 *that the grounds under subparagraph (A)*
7 *exist, the third party hearing such appeal*
8 *shall make a determination of how much to*
9 *reduce the chargeable risk premium rate for*
10 *flood insurance coverage for the property in-*
11 *volved in the appeal from the amount re-*
12 *quired under paragraph (1) and the Direc-*
13 *tor shall promptly reduce the chargeable*
14 *risk premium rate for such property by*
15 *such amount; and*

16 “(ii) *if a final determination is made*
17 *that the grounds under subparagraph (A)*
18 *do not exist, the Director shall promptly in-*
19 *crease the chargeable risk premium rate for*
20 *such property to the amount established*
21 *pursuant to paragraph (1) and shall collect*
22 *from the property owner the amount nec-*
23 *essary to cover the stay of the applicability*
24 *of such increased rates during the pendency*
25 *of the appeal.*

1 “(D) *COSTS.*—*If the third party hearing an*
2 *appeal under this paragraph is compensated for*
3 *such service, the costs of such compensation shall*
4 *be borne—*

5 “(i) *by the owner of the property re-*
6 *questing the appeal, if the final determina-*
7 *tion in the appeal is that the grounds under*
8 *subparagraph (A) do not exist; and*

9 “(ii) *by the National Flood Insurance*
10 *Fund, if such final determination is that*
11 *the grounds under subparagraph (A) do*
12 *exist.*

13 “(E) *REPORT.*—*Not later than 6 months*
14 *after the date of the enactment of the Two Floods*
15 *and You Are Out of the Taxpayers’ Pocket Act*
16 *of 2003, the Director shall submit a report to the*
17 *House of Representatives and the Senate describ-*
18 *ing the rules, procedures, and administration for*
19 *appeals under this paragraph.*

20 “(h) *DISCRETIONARY ACTIONS IN CASES OF FRAUDU-*
21 *LENT CLAIMS.*—*If the Director determines that a fraudu-*
22 *lent claim was made under flood insurance coverage under*
23 *this title for a severe repetitive loss property, the Director*
24 *may—*

1 “(1) *cancel the policy and deny the provision to*
 2 *such policyholder of any new flood insurance coverage*
 3 *under this title for the property; or*

4 “(2) *refuse to renew the policy with such policy-*
 5 *holder upon expiration and deny the provision of any*
 6 *new flood insurance coverage under this title to such*
 7 *policyholder for the property.*

8 “(i) *FUNDING.—Pursuant to section 1310(a)(8), the*
 9 *Director may use amounts from the National Flood Insur-*
 10 *ance Fund to provide assistance under this section in each*
 11 *of fiscal years 2004, 2005, 2006, 2007, and 2008, except*
 12 *that the amount so used in each such fiscal year may not*
 13 *exceed \$40,000,000 and shall remain available until ex-*
 14 *pende. Notwithstanding any other provision of this title,*
 15 *amounts made available pursuant to this subsection shall*
 16 *not be subject to offsetting collections through premium*
 17 *rates for flood insurance coverage under this title.*

18 “(j) *TERMINATION.—The Director may not provide as-*
 19 *sistance under this section to any State or community after*
 20 *September 30, 2008.”.*

21 (b) *AVAILABILITY OF NATIONAL FLOOD INSURANCE*
 22 *FUND AMOUNTS.—Section 1310(a) of the National Flood*
 23 *Insurance Act of 1968 (42 U.S.C. 4017(a)) is amended—*
 24 (1) *in paragraph (7), by striking “and” at the*
 25 *end; and*

1 (2) by striking paragraph (8) and inserting the
2 following new paragraph:

3 “(8) for financial assistance under section 1362
4 to States and communities for taking actions under
5 such section with respect to severe repetitive loss prop-
6 erties, but only to the extent provided in section
7 1362(i); and”.

8 **SEC. 5. ENHANCED AUTHORITY IN FLOOD MITIGATION AS-**
9 **SISTANCE PROGRAM.**

10 (a) *MITIGATION ASSISTANCE FOR REPETITIVE CLAIMS*
11 *PROPERTIES.*—Section 1366(e) of the National Flood In-
12 surance Act of 1968 (42 U.S.C. 4104c) is amended—

13 (1) by striking paragraph (4) and inserting the
14 following new paragraph:

15 “(4) *STANDARD FOR ASSISTANCE.*—In providing
16 grants under this subsection for mitigation activities,
17 the Director shall give first priority for funding to re-
18 petitive claims properties, or to such subsets of such
19 properties as the Director may establish pursuant to
20 subsection (n)(2), that the Director determines are the
21 most cost-effective for the taxpayers of the United
22 States, are in the best interests of the National Flood
23 Insurance Fund, and for which matching amounts
24 under subsection (f) are available.”; and

1 (2) *by adding at the end the following new para-*
 2 *graph:*

3 “(6) *NOTICE.*—*Upon making an offer to conduct*
 4 *any eligible mitigation activity under paragraph (5)*
 5 *with respect to a repetitive claims property or a se-*
 6 *vere repetitive loss property (as such term is defined*
 7 *in section 1362(b)) using amounts provided under*
 8 *this section, the State or community shall notify each*
 9 *holder of a recorded interest on the property of such*
 10 *offer and activity.”.*

11 (b) *LIMITATIONS ON PROPERTY ACQUISITION.*—*Sec-*
 12 *tion 1366(e)(5)(C) of the National Flood Insurance Act of*
 13 *1968 (42 U.S.C. 4104c(e)(5)(C)) is amended by striking*
 14 *“for public use, as the Director determines is consistent with*
 15 *sound land management and use in such area” and insert-*
 16 *ing the following: “except that amounts provided under this*
 17 *section may not be used for acquisition of any property un-*
 18 *less—*

19 “(i) *the State or community enters*
 20 *into an agreement with the Director that*
 21 *provides assurances that the property pur-*
 22 *chased will be used in a manner that is*
 23 *consistent with the requirements of clauses*
 24 *(i) and (ii) of section 404(b)(2)(B) of the*
 25 *Robert T. Stafford Disaster Relief and*

1 *Emergency Assistance Act (42 U.S.C.*
2 *5170c(b)(2)(B)) for properties acquired, ac-*
3 *cepted, or from which a structure will be re-*
4 *moved pursuant to a project provided prop-*
5 *erty acquisition and relocation assistance*
6 *under such section 404(b); and*

7 *“(ii) the amount of purchase offer is*
8 *not less than the greatest of—*

9 *“(I) the amount of the original*
10 *purchase price of the property, when*
11 *purchased by the holder of the current*
12 *policy of flood insurance under this*
13 *title;*

14 *“(II) the total amount owed, at*
15 *the time the offer to purchase is made,*
16 *under any loan secured by a recorded*
17 *interest on the property; and*

18 *“(III) an amount equal to the fair*
19 *market value of the property imme-*
20 *diately before the most recent flood*
21 *event affecting the property”.*

22 (c) *WAIVER OF LIMITATIONS ON ASSISTANCE.—Sec-*
23 *tion 1366(f) of the National Flood Insurance Act of 1968*
24 *(42 U.S.C. 4104c(f)) is amended by striking paragraph (3)*
25 *and inserting the following new paragraph:*

1 “(3) *WAIVER.—The Director may waive the dol-*
 2 *lar amount limitations under paragraphs (1) and (2)*
 3 *for any State or community—*

4 “(A) *for any 5-year period when a major*
 5 *disaster or emergency declared by the President*
 6 *(pursuant to the Robert T. Stafford Disaster Re-*
 7 *lief and Emergency Assistance Act (42 U.S.C.*
 8 *5121 et seq.)) as a result of flood conditions is*
 9 *in effect with respect to areas in the State or*
 10 *community; or*

11 “(B) *whenever the Director determines that*
 12 *repetitive claims properties are located within*
 13 *such State or community and that waiver of the*
 14 *cost limitations is cost-effective and in the best*
 15 *interests of the National Flood Insurance*
 16 *Fund.”.*

17 (d) *PENALTIES FOR REFUSAL TO MITIGATE AND*
 18 *FRAUDULENT CLAIMS.—Section 1366 of the National Flood*
 19 *Insurance Act of 1968 (42 U.S.C. 4104c) is amended—*

20 (1) *by striking subsection (k);*

21 (2) *by redesignating subsection (j) as subsection*
 22 *(l); and*

23 (3) *by inserting after subsection (i) the following*
 24 *new subsections:*

1 “(j) *INCREASE TO ACTUARIAL RATES IN CASES OF RE-*
2 *FUSAL TO MITIGATE.*—

3 “(1) *IN GENERAL.*—*In any case in which the*
4 *owner of a repetitive claims property refuses an offer*
5 *of a State or community to conduct, with respect to*
6 *such property, mitigation activities under subsection*
7 *(e) under a mitigation plan approved by the Director,*
8 *the Director shall—*

9 “(A) *notify each holder of a recorded inter-*
10 *est on the property of such refusal; and*

11 “(B) *increase the chargeable risk premium*
12 *rate for flood insurance coverage under this title*
13 *for the property to an amount equal to the appli-*
14 *cable estimated risk premium rate for such area*
15 *(or subdivision thereof) under section 1307(a)(1)*
16 *and apply appropriate loss deductibles.*

17 “(2) *APPEALS.*—

18 “(A) *MITIGATION ACTIONS.*—*Any owner of*
19 *a repetitive claims property may appeal a deter-*
20 *mination of the Director to take action under*
21 *paragraph (1)(B) with respect to such property,*
22 *based only upon the following grounds:*

23 “(i) *As a result of such action, the*
24 *owner of the property will not be able to*
25 *purchase a replacement primary residence*

1 *of comparable value and that is function-*
2 *ally equivalent.*

3 “(ii) *As a result of such action, the*
4 *preservation or maintenance of any pre-*
5 *historic or historic district, site, building,*
6 *structure, or object included in, or eligible*
7 *for inclusion in, the National Register of*
8 *historic places will be interfered with, im-*
9 *paired, or disrupted.*

10 “(iii) *The flooding that resulted in the*
11 *flood insurance claims payments described*
12 *in subsection (n)(2) for the property re-*
13 *sulted from significant actions by a third*
14 *party in violation of Federal, State, or local*
15 *law, ordinance, or regulation.*

16 “(iv) *In purchasing the property, the*
17 *owner relied upon flood insurance rate*
18 *maps of the Federal Emergency Manage-*
19 *ment Agency that were current at the time*
20 *and did not indicate that the property was*
21 *located in an area having special flood haz-*
22 *ards.*

23 “(B) *PROCEDURE.—An appeal under this*
24 *paragraph of a determination of the Director*
25 *shall be made by filing, with the Director, a re-*

1 *quest for an appeal within 90 days after receiv-*
 2 *ing notice of such determination. Upon receiving*
 3 *the request, the Director shall select, from a list*
 4 *of independent third parties compiled by the Di-*
 5 *rector for such purpose, a party to hear such ap-*
 6 *peal. Within 90 days after filing of the request*
 7 *for the appeal, such third party shall review the*
 8 *determination of the Director and shall set aside*
 9 *such determination if the third party determines*
 10 *that the grounds under subparagraph (A) exist.*
 11 *During the pendency of an appeal under this*
 12 *paragraph, the Director shall stay the applica-*
 13 *bility of the rates established pursuant to para-*
 14 *graph (1).*

15 *“(C) EFFECT OF FINAL DETERMINATION.—*

16 *In an appeal under this paragraph—*

17 *“(i) if a final determination is made*
 18 *that the grounds under subparagraph (A)*
 19 *exist, the third party hearing such appeal*
 20 *shall make a determination of how much to*
 21 *reduce the chargeable risk premium rate for*
 22 *flood insurance coverage for the property in-*
 23 *volved in the appeal from the amount re-*
 24 *quired under paragraph (1) and the Direc-*
 25 *tor shall promptly reduce the chargeable*

1 *risk premium rate for such property by*
2 *such amount; and*

3 “(ii) *if a final determination is made*
4 *that the grounds under subparagraph (A)*
5 *do not exist, the Director shall promptly in-*
6 *crease the chargeable risk premium rate for*
7 *such property to the amount established*
8 *pursuant to paragraph (1) and shall collect*
9 *from the property owner the amount nec-*
10 *essary to cover the stay of the applicability*
11 *of such increased rates during the pendency*
12 *of the appeal.*

13 “(D) *COSTS.—If the third party hearing an*
14 *appeal under this paragraph is compensated for*
15 *such service, the costs of such compensation shall*
16 *be borne—*

17 “(i) *by the owner of the property re-*
18 *questing the appeal, if the final determina-*
19 *tion in the appeal is that the grounds under*
20 *subparagraph (A) do not exist; and*

21 “(ii) *by the National Flood Mitigation*
22 *Fund, if such final determination is that*
23 *the grounds under subparagraph (A) do*
24 *exist.*

1 “(E) *REPORT.*—Not later than 6 months
2 after the date of the enactment of the *Two Floods*
3 and *You Are Out of the Taxpayers’ Pocket Act*
4 of 2003, the Director shall submit a report to the
5 House of Representatives and the Senate describ-
6 ing the rules, procedures, and administration for
7 appeals under this paragraph, which shall be
8 submitted together with the report required
9 under section 1362(g)(2)(E).

10 “(k) *DISCRETIONARY ACTIONS IN CASES OF FRAUDU-*
11 *LENT CLAIMS.*—If the Director determines that a fraudu-
12 lent claim was made under flood insurance coverage under
13 this title for a repetitive claims property, the Director
14 may—

15 “(1) cancel the policy and deny the provision to
16 such policyholder of any new flood insurance coverage
17 under this title for the property; or

18 “(2) refuse to renew the policy with such policy-
19 holder upon expiration and deny the provision of any
20 new flood insurance coverage under this title to such
21 policyholder for the property.”.

22 “(e) *COORDINATION WITH STATES AND COMMU-*
23 *NITIES.*—Section 1366 of the *National Flood Insurance Act*
24 of 1968 (42 U.S.C. 4104c) is amended by adding at the
25 end the following new subsection:

1 “(m) *COORDINATION WITH STATES AND COMMU-*
 2 *NITIES.—The Director shall, in consultation and coordina-*
 3 *tion with States and communities:*

4 “(1) *IDENTIFICATION OF REPETITIVE CLAIMS*
 5 *PROPERTIES.—Identify repetitive claims properties*
 6 *and properties at risk of becoming repetitive claims*
 7 *properties.*

8 “(2) *MANAGEMENT OF 100-YEAR FLOODPLAIN.—*
 9 *Take such actions as are appropriate to encourage*
 10 *and improve participation of owners of properties*
 11 *that are not located in areas having special flood haz-*
 12 *ards but are located within the 100-year floodplain.”.*

13 “(f) *DEFINITION OF REPETITIVE CLAIMS PROPERTY.—*
 14 *Section 1366 of the National Flood Insurance Act of 1968*
 15 *(42 U.S.C. 4104c) is amended by adding at the end the*
 16 *following new subsection:*

17 “(n) *DEFINITIONS.—For purposes of this section:*

18 “(1) *COMMUNITY.—The term ‘community’*
 19 *means—*

20 “(A) *a political subdivision that—*

21 “(i) *has zoning and building code ju-*
 22 *risdiction over a particular area having*
 23 *special flood hazards; and*

24 “(ii) *is participating in the national*
 25 *flood insurance program; or*

1 “(B) a political subdivision of a State, or
 2 other authority, that is designated to develop and
 3 administer a mitigation plan and manage
 4 projects by political subdivisions, all of which
 5 meet the requirements of subparagraph (A).

6 “(2) *REPETITIVE CLAIMS PROPERTY*.—The term
 7 ‘repetitive claims property’ means, without regard to
 8 the ownership of the property, a property with respect
 9 to which claim payments for losses have been made—

10 “(A) under flood insurance coverage under
 11 this title,

12 “(B) on more than one occasion within a
 13 10-year period, and

14 “(C) for which the cumulative value of the
 15 amount by which such claims exceed the amount
 16 of any applicable deductible under such coverage
 17 is \$5,000 or more,

18 The Director may, by regulation, further define sub-
 19 sets of repetitive claims properties for purposes of sub-
 20 section (e)(4).”.

21 (g) *FUNDING*.—Section 1367(b) of the National Flood
 22 Insurance Act of 1968 (42 U.S.C. 4104d(b)) is amended—

23 (1) by redesignating paragraphs (2) and (3) as
 24 paragraphs (3) and (4); and

1 (2) *by striking paragraph (1) and inserting the*
 2 *following new paragraphs:*

3 “(1) *in each fiscal year, amounts from the Na-*
 4 *tional Flood Insurance Fund not exceeding*
 5 *\$20,000,000;*

6 “(2) *in each of fiscal years 2004, 2005, 2006,*
 7 *2007, and 2008, in addition to amounts under para-*
 8 *graph (1), amounts from the National Flood Insur-*
 9 *ance Fund not exceeding \$40,000,000, to remain*
 10 *available until expended, except that—*

11 “(A) *such amounts shall be used only under*
 12 *section 1366 for mitigation activities for repet-*
 13 *itive claims properties (as such term is defined*
 14 *in section 1366(n)); and*

15 “(B) *notwithstanding any other provision*
 16 *of this title, amounts made available pursuant to*
 17 *this paragraph shall not be subject to offsetting*
 18 *collections through premium rates for flood in-*
 19 *surance coverage under this title; and”.*

20 **SEC. 6. FEMA AUTHORITY TO FUND MITIGATION ACTIVI-**
 21 **TIES FOR INDIVIDUAL REPETITIVE CLAIMS**
 22 **PROPERTIES.**

23 (a) *IN GENERAL.*—Chapter I of the National Flood In-
 24 *surance Act of 1968 (42 U.S.C. 4011 et seq.) is amended*
 25 *by adding at the end the following new section:*

1 “GRANTS FOR REPETITIVE INSURANCE CLAIMS PROPERTIES

2 “SEC. 1323. (a) IN GENERAL.—The Director may pro-
3 vide funding for mitigation actions that reduce flood dam-
4 ages to repetitive claims properties, but only if the Director
5 determines that—

6 “(1) such activities are in the best interest of the
7 National Flood Insurance Fund; and

8 “(2) such activities can not be funded under the
9 program under section 1366 because—

10 “(A) the requirements of section 1366(g) are
11 not being met by the State or community in
12 which the property is located; or

13 “(B) the State or community does not have
14 the capacity to manage such activities.

15 “(b) PRIORITY FOR WORST-CASE PROPERTIES.—In
16 determining properties for which funding is to be provided
17 under this section, the Director shall give priority based on
18 the amount of losses to the National Flood Insurance Fund
19 that claims for a property have caused or are reasonably
20 expected to cause.

21 “(c) DEFINITION.—For purposes of this section, the
22 term ‘repetitive claims property’ has the meaning given
23 such term in section 1366(n).”.

24 (b) AVAILABILITY OF NATIONAL FLOOD INSURANCE
25 FUND AMOUNTS.—Section 1310(a) of the National Flood

1 *Insurance Act of 1968 (42 U.S.C. 4017(a)) is amended by*
 2 *adding at the end the following new paragraph:*

3 “(9) for funding, not to exceed \$10,000,000 in
 4 any fiscal year, for mitigation actions under section
 5 1323, except that, notwithstanding any other provi-
 6 sion of this title, amounts made available pursuant to
 7 this paragraph shall not be subject to offsetting collec-
 8 tions through premium rates for flood insurance cov-
 9 erage under this title.”.

10 **SEC. 7. ACTUARIAL RATE PROPERTIES.**

11 (a) *IN GENERAL.*—Section 1308 of the National Flood
 12 *Insurance Act of 1968 (42 U.S.C. 4015) is amended by*
 13 *striking subsection (c) and inserting the following new sub-*
 14 *section:*

15 “(c) *ACTUARIAL RATE PROPERTIES.*—Subject only to
 16 *the limitations provided under paragraphs (1) and (2), the*
 17 *chargeable rate shall not be less than the applicable esti-*
 18 *mated risk premium rate for such area (or subdivision*
 19 *thereof) under section 1307(a)(1) with respect to the fol-*
 20 *lowing properties:*

21 “(1) *POST-FIRM PROPERTIES.*—Any property the
 22 construction or substantial improvement of which the
 23 Director determines has been started after December
 24 31, 1974, or started after the effective date of the ini-
 25 tial rate map published by the Director under para-

1 *graph (2) of section 1360 for the area in which such*
 2 *property is located, whichever is later, except that the*
 3 *chargeable rate for properties under this paragraph*
 4 *shall be subject to the limitation under subsection (e).*

5 *“(2) PROPERTIES REFUSING MITIGATION ASSIST-*
 6 *ANCE.—Any property for which the Director has*
 7 *taken action under section 1362(g)(1) or 1366(i)(1).*

8 *“(3) CERTAIN LEASED COASTAL AND RIVER*
 9 *PROPERTIES.—Any property leased from the Federal*
 10 *Government (including residential and nonresidential*
 11 *properties) that the Director determines is located on*
 12 *the river-facing side of any dike, levee, or other*
 13 *riverine flood control structure, or seaward of any*
 14 *seawall or other coastal flood control structure.”.*

15 *(b) INAPPLICABILITY OF ANNUAL LIMITATIONS ON*
 16 *PREMIUM INCREASES.—Section 1308(e) of the National*
 17 *Flood Insurance Act of 1968 (42 U.S.C. 4015(e)) is amend-*
 18 *ed by striking “Notwithstanding” and inserting “Except*
 19 *with respect to properties described under paragraph (2)*
 20 *or (3) of subsection (c) and notwithstanding”.*

1 **SEC. 8. REMOVING REPETITIVE INSURANCE CLAIMS PROP-**
 2 **ERTIES FROM FEDERAL DISASTER ASSIST-**
 3 **ANCE RESPONSIBILITY.**

4 (a) *IN GENERAL.*—Section 582 of the National Flood
 5 Insurance Reform Act of 1994 (42 U.S.C. 5154a) is amend-
 6 ed—

7 (1) by redesignating subsections (d) and (e) as
 8 subsections (e) and (f), respectively; and

9 (2) by inserting after subsection (c) the following
 10 new subsection:

11 “(d) *UNMITIGATED REPETITIVE INSURANCE CLAIMS*
 12 *PROPERTIES.*—Notwithstanding any other provision of
 13 law, no Federal disaster relief assistance made available in
 14 a flood disaster area may be used to make a payment (in-
 15 cluding any loan assistance payment) for repair, replace-
 16 ment, or restoration for damage to a property located in
 17 such area if—

18 “(1) such property is a repetitive claims prop-
 19 erty (as such term is defined in section 1366(n) of the
 20 National Flood Insurance Act of 1968 (42 U.S.C.
 21 4104c(o)) or a severe repetitive loss property (as such
 22 term is defined in section 1362(b) of such Act (42
 23 U.S.C. 4103(b)); and

24 “(2) in accordance with such requirements as the
 25 Director may establish, mitigation assistance under
 26 section 1362 or 1366 of the National Flood Insurance

1 *Act of 1968 has been offered to the owner of the prop-*
 2 *erty, before or after the occurrence of the flood loss*
 3 *events, which was refused by the owner.”.*

4 **(b) EFFECTIVE DATE.**—*Notwithstanding subsection (f)*
 5 *of section 582 of the National Flood Insurance Reform Act*
 6 *of 1994 (as so redesignated by paragraph (1)(A) of this sub-*
 7 *section), the amendment made by paragraph (1) shall apply*
 8 *to disasters declared after the date of the enactment of this*
 9 *Act.*

10 **SEC. 9. ELECTRONIC DATABASE OF REPETITIVE CLAIMS**
 11 **PROPERTIES.**

12 *Section 1364 of the National Flood Insurance Act of*
 13 *1968 (42 U.S.C. 4104a) is amended by adding at the end*
 14 *the following new subsection:*

15 **“(d) ELECTRONIC DATABASE OF REPETITIVE CLAIMS**
 16 **PROPERTIES.**—*The Director may, if the Director deter-*
 17 *mines such action is feasible, establish and maintain a*
 18 *database identifying by location and address all repetitive*
 19 *claims properties (as such term is defined in section*
 20 *1366(n)), repetitive loss structures (as such term is defined*
 21 *in section 1370), and severe repetitive loss properties (as*
 22 *such term is defined in section 1362(b)). If established, the*
 23 *Director shall make the database available to the public in*
 24 *a format that may be searched electronically. Such a data-*

1 *base shall not include any information regarding ownership*
 2 *of properties.”.*

3 ***SEC. 10. REPLACEMENT OF MOBILE HOMES ON ORIGINAL***
 4 ***SITES.***

5 *Section 1315 of the National Flood Insurance Act of*
 6 *1968 (42 U.S.C. 4022) is amended by adding at the end*
 7 *the following new subsection:*

8 *“(c) REPLACEMENT OF MOBILE HOMES ON ORIGINAL*
 9 *SITES.—*

10 *“(1) COMMUNITY PARTICIPATION.—The place-*
 11 *ment of any mobile home on any site shall not affect*
 12 *the eligibility of any community to participate in the*
 13 *flood insurance program under this title and the*
 14 *Flood Disaster Protection Act of 1973 (notwith-*
 15 *standing that such placement may fail to comply*
 16 *with any elevation or flood damage mitigation re-*
 17 *quirements), if—*

18 *“(A) such mobile home was previously lo-*
 19 *cated on such site;*

20 *“(B) such mobile home was relocated from*
 21 *such site because of flooding that threatened or*
 22 *affected such site; and*

23 *“(C) such replacement is conducted not*
 24 *later than the expiration of the 180-day period*
 25 *that begins upon the subsidence (in the area of*

1 *such site) of the body of water that flooded to a*
2 *level considered lower than flood levels.*

3 “(2) *DEFINITION.—For purposes of this sub-*
4 *section, the term ‘mobile home’ has the meaning given*
5 *such term in the law of the State in which the mobile*
6 *home is located.’.*”

7 **SEC. 11. REITERATION OF FEMA RESPONSIBILITY TO MAP**
8 **MUDSLIDES.**

9 *As directed in section 1360(b) of the National Flood*
10 *Insurance Act of 1968 (42 U.S.C. 4101(b)), the Director of*
11 *the Federal Emergency Management Agency is again di-*
12 *rected to accelerate the identification of risk zones within*
13 *flood-prone and mudslide-prone areas, as provided by sub-*
14 *section (a)(2) of such section 1360, in order to make known*
15 *the degree of hazard within each such zone at the earliest*
16 *possible date.*

Union Calendar No. 152

108TH CONGRESS
1ST SESSION

H. R. 253

[Report No. 108-266]

A BILL

To amend the National Flood Insurance Act of 1968 to reduce losses to properties for which repetitive flood insurance claim payments have been made.

SEPTEMBER 5, 2003

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed